IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

VULCAN GOLF, LLC, JOHN B. SANFILLIPPO & SON, INC., BLITZ REALTY GROUP, INC., and VINCENT E. "BO" JACKSON, individually and on behalf of all others similarly situated,	§	
	§	Civil Action No.: 07-C-3371
Lead Plaintiff,	§	
	§	Hon. Blanche M. Manning
v.	§	
	§	
GOOGLE INC., OVERSEE.NET, SEDO LLC, DOTSTER, INC., a/k/a REVENUEDIRECT.COM, INTERNET REIT, INC. d/b/a IREIT, INC., and JOHN DOES I-X,	§	
	§	
Defendants.	§	

PLAINTIFFS' CLARIFYING STATEMENT
REGARDING THE CLASS DEFINITION AND SUBCLASSES

In an October 1, 2008 minute entry, this Court [D.E. 222] directed Plaintiffs to submit a "very brief clarifying statement . . . setting forth all of their proposed class and subclass definitions." Plaintiffs respectfully submit the following clarifying statement.

In their opening brief, Plaintiffs proposed the following class definition:

> Any individual or owner of a mark whose personal name or mark is identical or confusingly similar to a parked domain name that has been registered, trafficked in or used for commercial gain, by one or more of the Defendants, during the period of time January 1, 2002 through the present.
>
> (the "Class").[1]

[1] As noted, excluded from the Class are governmental entities, Defendants, Defendants' parents, predecessors, subsidiaries, affiliates, agents and Defendants' co-conspirators and mark owners that authorized one or more of the Defendants to use their mark for commercial gain.

In their reply brief, Plaintiffs responded to Defendants' challenges by proposing a subclass that (1) eliminates any potential problems relating to multiple registrations of the same mark by narrowing the class to mark owners who have also registered their mark as (or within) a domain name; and (2) expressly includes in the definition itself certain elements of the methodology for ascertaining class membership:

> Any owner of a *mark appearing on the principal or secondary registry of the United States Patent and Trademark Office* who has registered a domain name containing that mark (a "mark owner's domain name"), and whose "mark owner's domain name" differs from a domain name parked and advertised on by one or more of the Defendants only by addition of a pre-pending "www" or "http" or post-pending "com."

(the "doubly-registered subclass") (emphasis added). Should the Court choose to apply the same modifications to the other subclasses, they would look like this:

> Any owner of an *unregistered mark* who has registered a domain name containing that mark (a "mark owner's domain name"), and whose "mark owner's domain name" differs from a domain name parked and advertised on by one or more of the Defendants only by addition of a pre-pending "www" or "http" or post-pending "com."
>
> Any *individual* who has registered a domain name containing his or her personal name (a "personal domain name"), and whose "personal domain name" differs from a domain name parked and advertised on by one or more of the Defendants only by addition of a pre-pending "www" or "http" or post-pending "com."

These subclasses replace the subclasses set forth in the opening brief and provide the Court with an option should it decide to narrow the Class to only those individuals and mark owners that have registered their names and marks as (or within) domain names, and to include in the actual language of the definition a methodology for ascertaining Class membership.

However, Plaintiffs have not abandoned the originally proposed Class, which is not limited to those individuals and mark owners that have registered domain names containing their names or marks. Instead, with respect to the originally proposed Class, Plaintiffs propose only that the Court incorporate the ascertainment methodology set out in Plaintiffs' opening brief into the Class definition.[2]

Therefore, Plaintiffs request that the Court either certify the originally proposed Class and expressly include an ascertainment methodology within the Class definition, or certify the doubly-registered subclass and corresponding subclasses for owners of unregistered marks and personal names as stand-alone classes.

Dated: October 2, 2008

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[2] If the Court were to include the simplest elements of the proposed ascertainment methodology in the definition of the originally proposed Class, it would look like this:

> Any individual or owner of a mark whose personal name or mark is identical to or differs from a domain name parked and advertised on by one or more of the Defendants only by addition of a pre-pending "www" or "http" or post-pending "com."

The Court could also include other elements from the ascertainment methodology set out in Plaintiffs' opening brief, such as differing from the Defendants' parked domain by a single letter or a dictionary word.

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CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2008, I electronically filed the foregoing document with the clerk of court for the U. S. District Court, Northern District of Illinois, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means:

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